

FHWA's Section 4(f) Regulation, Policy and Guidance


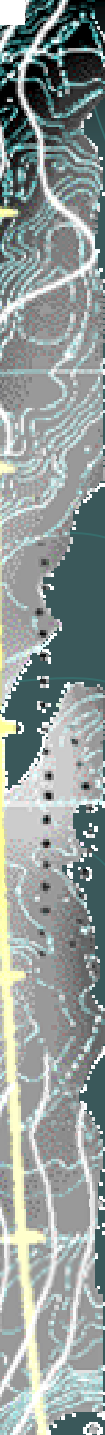
Applicability to Other DOT Modes



Lamar S. Smith, CEP

Team Leader, Project Development and
Environmental Review

Section 4(f) Compliance



- Regulation
- Policy Paper
- *De Minimis* Impacts Guidance
- Programmatic Evaluations
- Websites and Training

FHWA and FTA Regulations



- Regulation - 23 CFR 771.135
 - August 28, 1987
 - April 1, 1991, amended with constructive use
- Rulemaking currently underway to
 - Clarify the standards of “prudent and feasible” avoidance alternative analysis and selection
 - Clarify the application of legal standards to variety of transportation programs and projects

Section 4(f) Policy Paper - March 1, 2005



- Introduction and Background
- Section 4(f) Evaluation
- Use
- Applicability
 - public parks, recreation areas, and wildlife and waterfowl refuges
 - historic property
- Case Law Review

De Minimis Impact Guidance



- SAFETEA-LU Section 6009(a)
- Final Guidance issued on 12/13/2005
 - Joint with FTA
 - Developed by Team of Division Office, Resource Center, HQ and Chief Counsel
 - Coordinated with OST and FAA

De Minimis Impacts

- Applies to any “class of action” – CE, EA or EIS
- Finding on individual resource use, not on a project basis
- Impact after mitigation or enhancement
- Section 4(f) process is complete upon the finding
- Finding made by FHWA Division Administrator or FTA Region Administrator

De Minimis Impact Findings

Historic Sites

- Concurrence of the SHPO and/or THPO in Section 106 "no adverse effect" or "no historic properties affected"
- Agency informs the SHPO and/or THPO of intent to make *de minimis* impact finding based on written Section 106 concurrence
- Agency has considered the views of the consulting parties in Section 106 consultation

De Minimis Impact Findings

Parks, Recreation, Refuges

- Use after mitigation or enhancement does not adversely affect activities, features and attributes of 4(f) resource
- Officials with jurisdiction informed of intent to make *de minimis* impact finding based on written concurrence
- Public has been given an opportunity to review and comment on the effects to the Section 4(f) resource

Implementation Study



- Study of the first 3 years of implementation (8/10/08), with update by 3/1/2010
- Independent review by TRB of the study plan, methodology, and associated conclusions
- Processes and resulting efficiencies
- Number, location, size, and cost of the projects with *de minimis* impact findings
- Post-construction effectiveness of mitigation

Programmatic Evaluations



- Independent Walkway and Bikeways Construction Projects
- Historic Bridges
- Minor Involvements with Historic Sites
- Minor Involvements with Parks, Recreation Areas and Waterfowl and Wildlife Refuges
- Net Benefits 4(f)

References



- Section 4(f) Website

- www.environment.fhwa.dot.gov/projdev/pd5sec4f.asp

- Re:NEPA Community of Practice

- <http://nepa.fhwa.dot.gov>

- Tutorial

- www.section4f.com